



State of California – Natural Resources Agency
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EDMUND G. BROWN, Jr., Governor
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April 16, 2012

U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314-1000

Attention: CECW-CE, Tammy Conforti

Dear Ms. Conforti:

DOCKET NUMBER COE-2010-0007, POLICY GUIDANCE LETTER – PROCESS FOR REQUESTING A VARIANCE FROM VEGETATION STANDARDS FOR LEVEES AND FLOODWALLS

On behalf of the California Department of Fish and Game (Department), I am providing these comments on the U.S. Army Corps of Engineers' (USACE) Policy Guidance Letter – Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls (PGL or Current PGL) and accompanying draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) that appeared in the Federal Register on February 17, 2012. In a letter dated April 15, 2010 (April 15 Comment Letter), the Department and the California Department of Water Resources ("DWR") submitted extensive comments on USACE's prior version of the PGL, EA, and FONSI that appeared in the Federal Register on February 9, 2010. Needless to say, the Department is disappointed that the Current PGL, draft EA, and FONSI, fail to address any of the concerns raised in the Department's and DWR's April 15 Comment Letter.

Therefore, in addition to the Department's following two comments, the Department hereby repeats and incorporates by reference the April 15 Comment Letter which should be considered as comments on the Current PGL, draft EA, and FONSI.

1. USACE fails to provide sufficient rationale for precluding a regional variance.

USACE has failed to adequately respond to the Department's and other interested entities' requests for USACE to implement a regional approach to levee vegetation removal and variances. USACE provides the following rationale to avoid using regional variances: "[b]oth environmental issues and levee safety issues are site-specific in nature and benefit from a focused approach. . . . Applying a vegetation variance across a broad geographic region does not account for the individual differences between levee systems. The revised vegetation variance process ensures that the individual requirements of each levee system are taken into consideration when developing a solution to achieve environmental compliance, protect Tribal Nations' rights, and serve life safety goals." (Response to Public Comments Received from February–April 2010 on the UASCE Draft Policy for

Requesting a Variance to Vegetation Standards for Levees and Floodwalls, dated December 2011 (Response to Comments), §§ 1.B., 2.B.)

USACE, however, recognizes the value of a regional approach thereby undermining its own rationale for focusing on specific levee systems. In short, USACE states that environmental and levee safety issues are site specific for purposes of a variance, but those same issues are regional or national for purposes of system-wide improvements or removing vegetation. For example, in the same document that provides the rationale, USACE recognizes the value of a regional approach: “[e]ven though vegetation variance requests are being evaluated on an individual levee system basis, USACE encourages collaborative approaches to ensure that broader regional environmental and cultural considerations within the same geographical region are identified.” (Response to Comments, § 4.E. (emphasis added).)

Additional evidence that a regional approach is sufficient to address individual levee-system requirements appears in USACE’s Policy for Development and Implementation of System-Wide Improvement Frameworks, dated November 29, 2011 (SWIF). Although the SWIF does not address the Department’s concerns regarding USACE’s levee vegetation removal requirements, the SWIF does contemplate a plan for “multiple levee systems within a watershed” that could include “improvements that involve multiple levee systems.” (SWIF, §§ 2.c., 3.e.(2) (emphasis added).)

Furthermore, USACE undermines its own rationale for focusing on specific levees by implementing a policy such as the Guidelines for Landscape Planting and Vegetation Management, Engineering Technical Letter No. 1110-2-571 (April 2009); a national one-size-fits-all levee vegetation removal policy that clearly fails to account for the individual differences between levee systems.

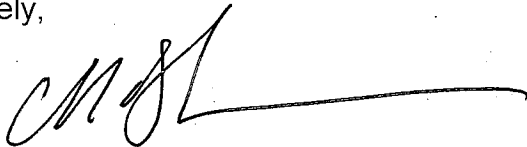
2. USACE should clarify the Districts’ responsibility for requesting variances.

Regardless of the fact that applying for a variance is overly burdensome, expensive, and impractical such that it provides no real solution to levee sponsors in California, the USACE should clarify its Districts’ obligation to apply for a variance. The Current PGL implies that Districts have the option to apply for a variance. Specifically, the Current PGL states that a USACE District “may” submit a variance request for existing federally authorized levees in which it can be demonstrated that vegetation was previously part of the original design or the existing operations and maintenance manual allows vegetation within the vegetation-free zone. (Current PGL, § 6.c.(2)-(3).) If these conditions are met and a USACE District submits a variance request, the USACE District will prepare the documentation needed to comply with the National Environmental Policy Act or Endangered Species Act. (Current PGL, § 11.)

However, the Response to Comments seems to indicate that USACE Districts are required to apply for variances when the conditions in section 6.c.(2) or (3) are in place. Specifically, the Response to Comments states that, "[i]n situations where USACE designed a levee system that includes vegetation as an integral part of the levee structure or where USACE has allowed for or issued an operations and maintenance manual that allows vegetation, USACE will take responsibility for developing the vegetation variance request package." (Response to Comments, § 2.B. (emphasis added)) The USACE should clarify if its Districts are obligated to apply for variances when the necessary pre-requisites are met.

The Department maintains that a variance process can be developed that is practical, integrated, and regionally adaptable. To that end, the Department looks forward to USACE further revising the PGL, Draft EA, and FONSI to address the Department's concerns in this letter. Please do not hesitate to contact Sandra Morey, Deputy Director, Ecosystem Conservation Division at (916) 653-6956, if USACE wishes to collaborate on revisions to the PGL, Draft EA, and FONSI.

Sincerely,



Charlton H. Bonham
Director

Enclosure

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